

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

Eastern District of Kentucky
FILED

OCT - 7 2005

AT LEXINGTON
LESLIE G WHITMER
CLERK U S DISTRICT COURT

THE COMMONWEALTH OF
KENTUCKY,

Plaintiff,

v.

SANITATION DISTRICT NO. 1
OF NORTHERN KENTUCKY,

Defendant.

Civil Action No.

05-199-WAB

UNITED STATES OF AMERICA,

Plaintiff-Intervener

v.

SANITATION DISTRICT NO. 1
OF NORTHERN KENTUCKY,

Defendant.

CONSENT DECREE

The Parties to this Consent Decree, the Commonwealth of Kentucky by and through its Environmental and Public Protection Cabinet (hereinafter the "Cabinet"), the United States of America, on behalf of the United States Environmental Protection Agency (hereinafter "EPA") and Sanitation District No. 1 of Northern Kentucky (hereinafter the "District") state:

I. RECITALS

1. The Cabinet is charged with the statutory duty of enforcing Kentucky Revised Statutes (“KRS”) Chapter 224 and the regulations promulgated pursuant thereto, and has been authorized to administer the National Pollutant Discharge Elimination System (“NPDES”) pursuant to Section 402(b) of the Federal Water Pollution Control Act, as amended (“Clean Water Act” or “CWA”), 33 U.S.C. § 1342(b).

2. EPA is charged with the statutory duty of enforcing the CWA pursuant to 33 U.S.C. § 1251 *et seq.*, and the regulations promulgated pursuant thereto, and specifically the NPDES program set forth in Section 402 of the CWA, 33 U.S.C. § 1342.

3. The District is a sanitation district organized and established pursuant to KRS Chapter 220. Pursuant to KRS Chapter 220, the District is responsible for management, collection, transmission and treatment of sanitary wastewater. In addition, the District is responsible for implementation of a regional stormwater management program for the municipal separate stormsewer systems (“MS4”) owned by over thirty municipalities in Northern Kentucky. Pursuant to KRS Chapter 220, the District assesses service fees to implement the sanitary and stormwater programs.

4. The District owns and operates a regional wastewater collection Sewer System in Boone, Campbell, and Kenton counties in Northern Kentucky. The wastewater collection system consists of separate sanitary sewer systems (“SSS”) and combined sewer systems (“CSS”). The wastewater collection system transports wastewater to wastewater treatment plants (“WWTPs”) owned and operated by the District.

5. This Consent Decree addresses sanitary sewer overflows (“SSOs”), Unpermitted Discharges, and discharges from the District’s combined sewer overflow

outfalls (“CSO Outfalls”) which are currently identified, or identified in the future, in any Kentucky Pollutant Discharge Elimination System (“KPDES”) permit issued to the District, and requires the District to finalize, develop, submit and implement plans for the continued improvement of the SSS, the CSS, and the WWTPs.

6. The Cabinet filed this action against the District pursuant to Section 505 of the CWA, 33 U.S.C. § 1365, and KRS Chapter 224. EPA filed its motion to intervene as of right and complaint in intervention under Section 505(c)(2) of the CWA, 33 U.S.C. § 1365(c)(2), alleging that the District violated and continued to violate Section 301 of the CWA, 33 U.S.C. § 1311. Concurrently with the filing of these complaints, the Cabinet and EPA lodged this Consent Decree addressing SSOs, Unpermitted Discharges, and discharges from the District’s CSO Outfalls, relating to the violations alleged in the complaints. All Parties agree that this Court has jurisdiction over this civil action pursuant to the CWA, and under the provisions for supplemental jurisdiction in 28 U.S.C. § 1367 for claims pursuant to KRS Chapter 224. The Cabinet’s claims arise under the powers and duties set forth in KRS Chapter 224.10-100. EPA’s claims arise under the powers and duties set forth in Section 309 of the CWA, 33 U.S.C. § 1319.

7. Pursuant to KPDES Permit No. KY0021466 for the Dry Creek Wastewater Treatment Plant (“DCWWTP”), the District is required to maintain an approved combined sewer operational plan (“CSOP”) implementing combined sewer overflow (“CSO”) controls for the CSS in accordance with EPA’s 1994 CSO Control Policy, 59 Fed. Reg. 18688 (“CSO Control Policy”) and the Commonwealth of Kentucky’s CSO control strategy. The CSOP is to include an evaluation of alternatives for effective prioritization of implementation of CSO controls that is based upon a

“comprehensive watershed management approach to include all point and non-point sources” including a coordination of SSO, stormwater and CSO programs. The KPDES permit for the DCWWTP requires the District to implement the nine minimum controls (“NMC”) delineated in EPA’s CSO Control Policy. EPA’s CSO Control Policy also provides for the development and implementation of a CSO Long-term Control Plan (“LTCP”).

8. The District contends it has implemented and maintained programs to comply with the NMC delineated in the CSO Control Policy and the DCWWTP permit. The District provides the Cabinet with an annual update to its CSOP that considers SSO, stormwater and CSO programs. The District has not yet developed a LTCP, but contends it has prepared a CSOP as required by the DCWWTP permit.

9. The District has reported to the Cabinet that, within its SSS, it has identified 106 locations, set forth in Exhibit A, at which reoccurring SSOs have been documented, and that additional potential SSOs are being investigated. The District submitted to the Cabinet a Regional Facilities Plan in mid-2000. Such plan was approved by the Cabinet in November 2002. The Regional Facilities Plan provides for the construction of two new regional wastewater treatment plants: the Western Regional Wastewater Treatment Plant (“WRWWTP”) and the Eastern Regional Wastewater Treatment Plant (“ERWWTP”). The District contends that the Regional Facilities Plan delineates a proposed approach for eliminating certain small wastewater treatment plants, addressing excessive inflow and infiltration (“I/I”) throughout the system and extending interceptor sewers throughout the service area by which SSOs will be addressed and treatment capacity will be available for future growth. The District also contends that

under the Regional Facilities Plan, construction of the WRWWTP is a critical component of the District's long term approach for addressing capacity-related wet weather problems in its existing system. In December 2000, the Regional Facilities Plan was challenged by the Alliance for Kentucky's Future, Inc. in the Cabinet's administrative forum. Despite this and other litigation, the District contends it has moved forward with further studies and evaluations to support its wet weather program, including initiating over 140 early action projects and spending in excess of \$130,000,000 since 1998 to rehabilitate the existing SSS, CSS and WWTPs. The District maintains that its Capital Improvement Program for the next five (5) years (FY2006 through FY2010) is projected to cost approximately \$342,000,000, which includes construction activities for the new WRWWTP and ERWWTP.

10. The Cabinet and the United States contend that SSOs and Unpermitted Discharges are violations of the CWA, Kentucky's statutes and regulations implementing the CWA, and KPDES permits issued for the District's WWTPs. The Cabinet and the United States also contend that Section 402(q)(1) of the CWA, 33 U.S.C. § 1342(q)(1), requires the District to develop a LTCP and implement measures to abate the impact of CSOs on water quality in waters of the United States.

11. The Parties agree and recognize that the process for the District to comply with its KPDES permits and upgrade its SSS, CSS and WWTPs is an ongoing and evolving effort from the assessment process to the design and construction of necessary infrastructure to meet permit conditions. This process requires efforts that include, but are not limited to, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures, and construction projects that will adequately

ensure the District's compliance with permit conditions under applicable law. The Parties recognize that it will take the District many years to implement these efforts and that this Consent Decree is the appropriate mechanism for controlling these efforts.

12. Until 1995, the operation and maintenance of the wastewater collection systems in Northern Kentucky was the responsibility of over thirty cities and three (3) counties.

13. As a result of revisions to portions of KRS Chapter 220 in 1995, the District acquired the wastewater collection and treatment systems of over thirty cities within the three (3)-county jurisdictional boundaries of the District. In 1996, the District took over responsibility for the sanitary wastewater system in Boone County from the Boone County Water and Sewer District. In 1999, the cities of Independence and Alexandria also consolidated their sanitary wastewater facilities with those of the District.

14. Through the consolidations, the District maintains that it assumed responsibility for addressing a large amount of I/I that impacted the various municipal wastewater systems. In some areas, the capacity issues were so severe that the Cabinet had imposed a moratorium on any development until such time as the sources of the I/I could be addressed and upgraded treatment capacity provided. Through the consolidations of the wastewater collection systems in Northern Kentucky, the District went from operating one (1) major treatment plant and approximately 120 miles of sewer lines in 1995, to operating over 1,500 miles of sewer lines, an additional 100-plus pump stations, and numerous small treatment plants, inherited from over thirty municipalities and districts, by 2000.

15. The District's sanitary sewer service area currently covers almost two hundred square miles and serves approximately 90,000 customer accounts. The District's wastewater system consists of approximately 1,500 miles of combined and separate sewers, one (1) major wastewater treatment plant, eight (8) other wastewater treatment plants, 128 pump stations, and 15 flood pump stations.

16. In early 2003, the District also assumed responsibility under the KPDES Phase II stormwater program for serving as a regional stormwater management agency for over thirty MS4s. In March 2003, the District obtained coverage under a Phase II general KPDES permit for the MS4s.

17. As set forth above, the District maintains that it has implemented measures to date in its efforts to achieve compliance under its KPDES permits, including abatement of many SSOs and establishing controls on certain CSOs.

18. In late 2004, the District proposed to the Cabinet to implement an Adaptive Watershed Management Program. The District maintains that its proposed Adaptive Watershed Management Program would address CSOs and SSOs, as well as other wet weather water quality concerns, on a watershed basis within the District's area of control and jurisdiction consistent with CWA requirements and would include schedules and priorities for the implementation of capital projects within each watershed.

19. This Consent Decree includes lists of additional work projects planned for the near future to provide the public the information and an opportunity for public notice and comment on additional specific measures being taken or to be taken, in accordance with the provisions of 28 C.F.R. § 50.7. The Parties also anticipate that this Consent Decree will be amended through material modifications as the District develops, designs,

and submits for review and approval Watershed Plans and Updated Watershed Plans. As part of that process of proposing such material modifications to this Consent Decree, the public will have an opportunity, in accordance with the provisions of 28 C.F.R. § 50.7, for notice and comment to present facts or considerations on whether the proposals are appropriate, proper and adequate to achieve full compliance with the CWA.

20. The Parties enter into this Consent Decree to address the claims arising from the District's alleged violations as set forth in the complaints, and to agree to the performance of certain specified projects and to the completion of certain plans, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures and construction projects on or before dates certain to eliminate SSOs and Unpermitted Discharges, and to address discharges from the District's CSO Outfalls, as set forth in this Consent Decree.

21. The District neither admits nor denies the alleged violations of the CWA and Kentucky water quality laws and regulations as set forth above and in the complaints, but accepts civil liability for those violations under the terms and conditions of this Consent Decree.

22. The Parties agree, without adjudication of facts or law, that settlement of the Cabinet's and the United States' claims in accordance with the terms of this Consent Decree is in the public interest and have agreed to entry of this Consent Decree without trial of any issues, and the Parties hereby stipulate that, in order to resolve these claims stated in the complaints, this Consent Decree should be entered.

NOW THEREFORE, in the interest of settling and resolving all civil claims and controversies involving the alleged violations described above and in the complaints

before taking any testimony and without adjudication of any fact or law, the Parties hereby consenting to the entry of this Consent Decree; and the Court hereby finding that settlement of the claims alleged without further litigation or trial of any issues is fair, reasonable and in the public interest and the entry of this Consent Decree is the most appropriate way of resolving the claims alleged, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

II. JURISDICTION AND VENUE

23. This Court has jurisdiction and supplemental jurisdiction over the subject matter of this action, and over the Parties hereto, pursuant to Sections 309 and 505 of the CWA, 33 U.S.C. §§ 1319, 1365 and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. Venue is proper in the Eastern District of Kentucky pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391 and 1395(a).

III. APPLICATION AND SCOPE

24. The provisions of this Consent Decree shall apply to and be binding upon the Parties to this action, and their agents, employees, successors, and assigns, as well as to all persons acting under the direction and/or control of the District, including firms, corporations, and third parties such as contractors engaged in implementation of this Consent Decree.

25. The District shall provide a copy of this Consent Decree to any consultant or contractor selected or retained to perform any activity required by this Consent Decree.

IV. REMEDIAL MEASURES

A. DEFINITIONS

26. “Capacity, Management, Operations, and Maintenance” or “CMOM” shall mean, for the purpose of this Consent Decree only, a flexible program of accepted

industry practices to properly manage, operate and maintain sanitary wastewater collection and transmissions systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

27. “Combined Sewer Overflow” or “CSO” shall mean, for the purpose of this Consent Decree only, any discharge from any outfall currently identified, or identified in the future, as a combined sewer overflow or CSO in any District KPDES permit.

28. “Combined Sewer Overflow Outfall” or “CSO Outfall” shall mean the outfalls from which CSOs are discharged to waters of the United States.

29. “Combined Sewer System” or “CSS” shall mean the portion of the District’s Sewer System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater runoff through a single-pipe system to the District’s DCWWTP or Combined Sewer Overflow Outfalls.

30. “Sanitary Sewer Overflow” or “SSO” shall mean, for the purpose of this Consent Decree only, any discharge to waters of the United States from the District’s Sewer System through point sources not specified in any KPDES permit, as well as any release of wastewater from the District’s Sewer System to public or private property that does not reach waters of the United States, such as a release to a land surface or structure that does not reach waters of the United States; provided, however, that releases or wastewater backups into buildings that are caused by blockages, flow conditions, or malfunctions in a building lateral, or other piping or conveyance system that is not owned or operationally controlled by the District are not SSOs for the purposes of this Consent Decree.

31. "Sanitary Sewer System" or "SSS" shall mean all portions of the District's Sewer System that are not part of the District's combined sewer system. The SSS does not include any non-District owned sewer systems.

32. "Sewer System" shall mean the wastewater collection, retention, and transmission system owned or operated by the District designed to collect and convey municipal sewage (domestic, commercial and industrial) to the District's WWTPs or CSOs which is comprised of the SSS and CSS.

33. "Unpermitted Discharge" shall mean any discharge to waters of the United States from the District's Sewer System or WWTPs through a point source not specified in any KPDES permit or from the District's WWTPs which constitutes a prohibited bypass (as defined in 401 KAR 5:065, Section 1(13)(c)).

B. **OBJECTIVES**

34. It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the CWA, as stated in Section 101 of the CWA, 33 U.S.C. § 1251, and to eliminate SSOs and Unpermitted Discharges and to address discharges from the District's CSO Outfalls in the manner set forth in this Consent Decree. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree, and under an amendment to this Consent Decree, shall have the objective of insuring that the District complies with the CWA, all applicable federal and state regulations, and the terms and conditions of the District's KPDES permits, and that the District meets the objectives of the CSO Control Policy.

C. **INITIAL WATERSHED PROGRAM PROJECTS AND SUBMITTALS**

35. **Nine Minimum Controls (“NMC”) Compliance.** Within twelve months of entry of this Consent Decree, the District shall submit to the Cabinet/EPA for review and joint approval documentation demonstrating the status of the District’s compliance with the NMCs for CSOs as set forth in the CSO Control Policy and, if the District cannot document in the submittal that all NMC requirements are being met, the submittal shall include proposed projects to be performed with compliance schedules for ensuring that compliance with the NMCs is achieved by no later than twenty-four months after entry of this Consent Decree. Thereafter, the District shall submit an annual report on its implementation of the NMCs within sixty days after each anniversary date of the original demonstration. In preparing the documentation of the NMC compliance status and the proposed projects, the District shall use as guidance the “Guidance for Nine Minimum Controls”, EPA 832-B-95-003, May 1995. The documentation submitted shall demonstrate compliance with the following controls:

- (a) proper operation and regular maintenance programs for the CSS and the CSOs;
- (b) maximum use of the collection system for storage;
- (c) review and modification of pretreatment requirements to assure CSO impacts are minimized;
- (d) maximization of flow to the DCWWTP for treatment;
- (e) prohibition of CSOs during dry weather, including provision for backup power where appropriate (provided, however, that those discharges resulting from the District’s compliance with the requirements of the United States Army Corps of Engineers’ Ohio River Flood

Protection System Pumping Operations Manual, dated 1954 and revised 1988, shall be addressed under the Watershed Plans);

(f) control of solid and floatable materials in CSOs, including installation of devices where appropriate;

(g) pollution prevention;

(h) ensuring that the public receives adequate notification of CSO occurrences and CSO impacts, including improving the current signage at each CSO location and providing signage at CSO impacted areas (*e.g.*, marinas, boat ramps, fishing areas, etc.) in an easily readable type size and style; and

(i) monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

36. CMOM (Capacity, Management, Operation and Maintenance)

Programs Self-Assessment. Within six (6) months of entry of this Consent Decree, the District shall submit to the Cabinet/EPA for review and joint approval a CMOM Programs Self-Assessment of the District's SSS and CSS in accordance with U.S. EPA Region IV methodology as set forth in the CDROM disk attached hereto as **Exhibit B**, to ensure that the District has CMOM Programs in place that are effective at eliminating SSOs. This Self-Assessment shall include an evaluation of, and recommendation of improvements to, each CMOM Program to ensure that such Programs contain the following key CMOM elements: written, defined purpose(s); written, defined goal(s); written documentation with specific details; implementation by well trained personnel; established performance measures; and written procedures for periodic review.

Recommended improvements shall include schedules for implementation. The District shall apply special emphasis to assessing its Gravity Line Preventative Maintenance Program. The District shall submit an annual report of the status of implementation of its CMOM Programs as provided in Paragraph 43 below.

(a) **Specific CMOM Program Development – Grease Control Program.**

In addition to the Self-Assessment provided above, the District shall also specifically submit to the Cabinet/EPA for review and joint approval within six (6) months of entry of this Consent Decree a Grease Control Program. The Grease Control Program shall include a schedule for the development and enforcement of grease control measures to assure that grease accumulations are not restricting the capacity of the Sewer System contributing to SSOs. At a minimum, the Grease Control Program shall include the requirements set forth on **Exhibit C.**

(b) **Specific CMOM Program Development – Pump Station Operation Plan for Backup Power.** In addition to the Self-Assessment provided above, the District shall also specifically submit to the Cabinet/EPA for review and joint approval within twelve months of entry of this Consent Decree a Pump Station Operation Plan for Backup Power that evaluates the District's pump stations and includes schedules for providing backup power or other appropriate measures for addressing power outages at the District's pump stations as soon as practicable; provided, however, that such schedules shall not extend beyond December 31, 2015.

(c) **Specific CMOM Program Development – Sewer Overflow Response Plan (“SORP”).** In addition to the Self-Assessment provided above, the District shall also specifically submit to the Cabinet/EPA for review and joint approval within six (6) months of entry of this Consent Decree a SORP in compliance with 401 KAR 5:015 to establish timely and effective methods and means of: (1) responding to, cleaning up, and/or minimizing the impact of all SSOs; (2) reporting the location, volume, cause and impact of all SSOs to the Cabinet and EPA; and (3) notifying the potentially impacted public. By no later than each anniversary date of the approval of the SORP, the District shall annually review the SORP and propose changes as appropriate subject to Cabinet/EPA review and approval. A copy of future updates to the SORP shall also be provided to the Florence Regional Office of the Cabinet’s Division of Water within fifteen days of incorporation of the update.

37. **Initial Watershed Program Project List.** The District shall complete the initial watershed projects identified in **Exhibit D** as a requirement of this Consent Decree in accordance with the schedule set forth in **Exhibit D**. The District shall provide an annual report within twelve months of entry of this Consent Decree on implementation of these watershed projects. Thereafter and until these projects are complete, the District shall provide an annual report on its implementation progress within sixty days after each anniversary date of the initial report.

38. **Pump Station Plan.** Within six (6) months of entry of this Consent Decree, the District shall submit to the Cabinet/EPA for review and joint approval a plan to identify watershed projects to eliminate SSOs at the pump stations identified on

Exhibit E (the “Pump Station Plan”). The Pump Station Plan shall include expeditious schedules for design, initiation of construction, and completion of construction of remedial measures; provided, however, that such schedules shall not extend beyond the dates set forth on **Exhibit E**. The District shall provide an annual report within twelve months of approval of the Pump Station Plan on implementation of these watershed projects. Thereafter and until such projects are complete, the District shall provide an annual report on its implementation progress within sixty days after each anniversary date of the initial report.

D. WATERSHED PLANS

39. The District shall prepare and submit to the Cabinet/EPA for review and joint approval a Framework for Development of Watershed Plans, a Watershed Plan for each of the four (4) watersheds that comprise the District’s service area as identified on the maps attached hereto as **Exhibit F**, and Updated Watershed Plans within the time frames and as more particularly set forth in subparagraphs (a), (b), and (c) below. Each Watershed Plan shall include components for a LTCP and a Sanitary Sewer Overflow Plan (“SSOP”). The District shall develop these Watershed Plans for the purpose of the reduction and control of discharges from CSO Outfalls consistent with the CSO Control Policy, the elimination of SSOs and Unpermitted Discharges in the Sewer System, and the improvement of water quality in the receiving waters. In preparing these Watershed Plans, the District shall implement a prioritization scheme for remedial measures based upon such factors as environmental impact, public risk, regulatory requirements, the degree of water quality improvement expected to be achieved, public input, and cost effectiveness. The District shall prepare conventional, innovative or alternative designs

as part of each Watershed Plan, including but not limited to: sewer rehabilitation, sewer replacement, sewer separation, relief sewers, above ground or below ground storage, high rate secondary treatment, illicit connection removal, remote wet weather secondary treatment facilities, and other appropriate alternatives. Designs shall be based on sound engineering judgment and shall be in accordance with generally accepted engineering design criteria and may include interim remedial measures to reduce pollutant loading and improve water quality in the short term while alternatives for final remedial measures are being developed, evaluated and implemented. In addition, the District may develop the LTCP component of the Watershed Plans in conjunction with a watershed based approach providing for the evaluation of water pollution control needs on a watershed management basis and the coordination of CSO control efforts with other permitted point sources and nonpoint source control activities. This watershed based approach may allow for a demonstration of attainment of water quality standards by the District's CSOs considering natural background conditions and pollution sources other than CSOs through any total maximum daily loads ("TMDLs") developed by the Cabinet.

(a) **Framework for Developing the Watershed Plans.** Within twelve months of entry of this Consent Decree, the District shall submit to the Cabinet/EPA for review and joint approval a Framework for developing the Watershed Plans.

(1) The Framework shall describe the manner in which the District plans to undertake the development of the LTCP component of the Watershed Plans, including, at a minimum, the following elements:

(A) An evaluation, if appropriate, of water pollution control

needs on a watershed management basis and the coordination of CSO control efforts with other permitted point sources and nonpoint source control activities; this watershed based approach shall allow for a demonstration that the District's CSOs comply with water quality standards considering natural background conditions and those pollution sources other than CSOs and shall take into consideration only those TMDLs expected to be finalized by the Cabinet prior to September 1, 2008;

- (B) Characterization, monitoring, modeling activities, and design parameters as the basis for selection and design of effective CSO controls (including controls to address those discharges resulting from the District's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);
- (C) A public participation process that actively involves the affected public in the decision-making to select long-term CSO controls consistent with provisions of Paragraph 40 below;
- (D) Consideration of sensitive areas as a high priority for controlling overflows, including drinking water intakes;
- (E) Evaluation of alternatives that will enable the District, in

consultation with the Cabinet, EPA, and the public, to select CSO controls that will meet the requirements of the CWA;

- (F) Cost/performance considerations to demonstrate the relationships among a comprehensive set of reasonable control alternatives;
 - (G) Operational plan revisions to include agreed-upon long-term CSO controls; and
 - (H) Maximization of treatment at the District's DCWWTP for wet weather flows.
- (2) The Framework shall describe the manner in which the District plans to prioritize, pursuant to the SSOP component of the Watershed Plans, the elimination of SSOs and Unpermitted Discharges at locations other than those already identified on *Exhibit E* and addressed pursuant to the Pump Station Plan, and shall include schedules for the evaluation of WWTP peak flow treatment capacity for WWTPs that have experienced a prohibited bypass (as defined in 401 KAR 5:065, Section 1(13)(c)) within three (3) years before the date of entry of this Consent Decree and for any WWTP that will receive additional flow based on any SSOP project.
- (3) If the District plans to identify and incorporate other permitted point sources and nonpoint sources contributing to water quality

impairment into the Watershed Plans, the Framework shall describe the manner in which the District plans to identify and incorporate such other permitted point sources and nonpoint sources and, where appropriate, how the District intends to insure that necessary controls are implemented at these sources.

(b) **Watershed Plans.** By December 31, 2008, the District shall submit a Watershed Plan for each of the four (4) Watersheds, which shall include components for a LTCP and a SSOP, to the Cabinet/EPA for review and joint approval. The LTCP component of the Watershed Plans shall conform to the CSO Control Policy, and, in developing the LTCP component, the District shall use as guidance EPA's "Guidance for Long-Term Control Plan," EPA 832-B- 95-002, September 1995. The SSOP component of the Watershed Plans shall specify remedial measures to eliminate SSOs and Unpermitted Discharges at locations other than those already identified on Exhibit E and addressed pursuant to the Pump Station Plan. The Watershed Plans shall include expeditious and prioritized schedules, deadlines and timetables for remedial measures that will bring the District's CSOs into full compliance with the water quality standards criteria listed for the CSO demonstrative approach or the presumptive approach, and that will eliminate SSOs and Unpermitted Discharges, as soon as practicable based on sound engineering judgment but in no event later than December 31, 2025. The Watershed Plans shall provide more detail for all remedial measures to be implemented in the first five (5) years after approval.

(1) The LTCP component of each Watershed Plan shall meet the

following goals:

- (A) Ensure that if CSOs occur, they are only as a result of wet weather (this goal shall include addressing those discharges resulting from the District's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);
 - (B) Bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the CWA; and
 - (C) Minimize the impacts of CSOs on water quality, aquatic biota, and human health.
- (2) The LTCP component of each Watershed Plan shall include, at a minimum, the following elements:
- (A) The results of any evaluation of water pollution control needs on a watershed management basis and the coordination of CSO control efforts with other permitted point sources and nonpoint source control activities and a demonstration that the District's CSOs comply with water quality standards considering natural background conditions and pollution sources other than CSOs through those TMDLs finalized by the Cabinet prior to September 1, 2008;

- (B) The results of characterization, monitoring, modeling activities, and the application of design parameters as the basis for selection and design of effective CSO controls (including controls to address those discharges resulting from the District's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988);
- (C) The results of an evaluation of peak flow treatment capacity for the DCWWTP and any WWTP that will receive additional flow based on any LTCP project. In preparing such an evaluation, the District shall use as guidance the EPA publications "Improving POTW Performance Using the Composite Correction Approach," EPA CERI, October 1984, and "Retrofitting POTWs," EPA CERI, July 1989;
- (D) A report on the public participation process;
- (E) Identification of how the LTCP addresses sensitive areas, including drinking water intakes, as a high priority for controlling overflows;
- (F) A report on the cost analyses of the alternatives considered, including a financial capability assessment based upon EPA's "Combined Sewer Overflows Guidance for

Financial Capability Assessment and Schedule Development,” EPA 832-B-97-004, February 1997, taking into account the economic capability of the communities the District serves;

- (G) Operational plan revisions to include agreed-upon long-term CSO controls;
 - (H) Maximization of treatment at the District’s existing WWTPs for wet weather flows;
 - (I) Identification of, and an implementation schedule for, the selected CSO controls; and
 - (J) A post-construction compliance monitoring program adequate to ascertain the effectiveness of CSO controls and to verify compliance of the District’s CSOs with water quality-based CWA requirements.
- (3) The SSOP component of each Watershed Plan shall include, at a minimum, the following elements:
- (A) The results of an evaluation of WWTP peak flow treatment capacity for WWTPs that have experienced a prohibited bypass (as defined in 401 KAR 5:065, Section 1(13)(c)) within three (3) years before the date of entry of this Consent Decree and for any WWTP that will receive additional flow based on any SSOP project. In preparing such evaluation, the District shall use as guidance the EPA

publications “Improving POTW Performance Using the Composite Correction Approach,” EPA CERL, October 1984, and “Retrofitting POTWs,” EPA CERL, July 1989.

(B) A map that shows the location of all known SSOs and Unpermitted Discharges. The map shall include the areas and sewer lines that serve as tributary to each SSO and Unpermitted Discharge. Smaller maps of individual tributary areas also may be included to show the lines involved in more detail.

(C) A description of each SSO and Unpermitted Discharge location that includes:

- (i) The frequency of the event;
- (ii) The annual volume of the event;
- (iii) A description of the location of the event, *e.g.*, manhole, etc.;
- (iv) The receiving stream;
- (v) The immediate area and downstream land use, including the potential for public health concerns;
- (vi) A description of any studies to investigate the event that were conducted within five (5) years of plan submission, that are being conducted at the time of plan submission, or that is proposed for the future; and

- (vii) A description of any rehabilitation or construction work that was conducted within five (5) years of plan submission, that is being conducted at the time of plan submission, or that is proposed for the future to remediate or eliminate the SSO or Unpermitted Discharge.
 - (D) A prioritization of the SSO and Unpermitted Discharge locations identified above, based primarily on the frequency, volume and impact on the receiving stream and upon public health, and in coordination with any remedial activity performed pursuant to the CMOM Programs and any other component of a Watershed Plan and an evaluation of water pollution needs on a watershed management basis. Based upon this prioritization, the District shall develop remedial measures and expeditious schedules for design, initiation of construction and completion of construction.
 - (E) A plan to involve stakeholders in the planning, prioritization and selection of projects consistent with provisions of Paragraph 40 below.
- (4) If Watershed Plans identify any permitted point sources or nonpoint sources, other than CSOs and SSOs, that are contributing to water quality impairment, the Watershed Plans shall also

identify planned control measures, if any, that the District plans to utilize and shall provide implementation schedules for these controls. If a control on these other sources of pollution is to be implemented to offset the level of CSO controls or to delay the elimination of an SSO or Unpermitted Discharge, other than through a final TMDL developed by the Cabinet, the Watershed Plan shall identify the means by which the District intends to insure that the control is implemented.

(c) **Updated Watershed Plans.** At least ninety days prior to the five (5) year anniversary of approval of each Watershed Plan, the District shall submit an Updated Watershed Plan to the Cabinet/EPA for review and joint approval. Existing Watershed Plans shall continue in effect until the Cabinet/EPA approves an updated plan. The District shall have the right to submit an Updated Watershed Plan to the Cabinet/EPA for review and joint approval at any time. Updated Watershed Plans shall be based upon the Framework for developing the Watershed Plans, as set forth in Paragraph 39(a) above, and shall take into consideration any TMDLs finalized by the Cabinet three (3) months prior to the update. The Updated Watershed Plans shall provide more detail for all remedial measures to be implemented over the successive five (5) year period based upon the approved schedule in the initial Watershed Plan or any revised scheduled approved by the Cabinet/EPA.

40. **Public Participation.** In the required public participation process to be developed in the Framework and the SSOPs, the District shall include procedures to

advertise, convene a public meeting, and accept public comment on the development of each Watershed Plan, in accordance with the publication procedures of KRS Chapter 424, as follows:

- (a) Within twelve months of entry of this Consent Decree, to obtain public input on the Watershed Plan process and potential consideration of projects; and
- (b) Following development of a draft Watershed Plan or draft Updated Watershed Plan, but prior to submittal of a proposed Watershed Plan or Updated Watershed Plan to the Cabinet/EPA for approval, to obtain public input on such draft plans.

The District shall also hold informal workshops and other informational meetings to solicit input from the public and the Cabinet/EPA in the decision-making process. The number and format of such informal workshops and meetings shall be left to the District's discretion. The District may, in its discretion, also form interest groups for each Watershed that may include members of the public, businesses, and/or governmental agencies that will be kept advised of progress on Watershed Plans through annual meetings.

41. Based on the factors described in 40 C.F.R. § 131.10(g) and on the report on the cost analysis on the alternatives considered as set forth in the LTCP components of the Watershed Plans, the District may request the Cabinet to consider a change to designated uses of receiving waters and/or may request a modification of water quality standards for a receiving water body during wet weather pursuant to a Use Attainability Analysis (401 KAR 5:026), provided, however, that the Cabinet shall not be obligated to take any action on such a request by virtue of this Consent Decree.

V. REPORTING REQUIREMENTS

42. **Quarterly Reports.** The District shall submit to the Cabinet/EPA a quarterly report that describes the District's progress in complying with this Consent Decree for the previous quarter no later than thirty days after the end of each calendar quarter. The first such report shall be submitted to the Cabinet/EPA no later than thirty days after the second full quarter after entry of this Consent Decree. After approval of the Watershed Plans pursuant to Paragraph 39(b), the District may request, as a non-material modification to this Consent Decree, a change to the frequency and content of such reports. The quarterly report shall include, at a minimum:

- (a) A description of projects and activities conducted during the previous quarter to comply with the requirements of this Consent Decree, in Gantt chart or similar format;
- (b) An accounting, both for the current quarter and cumulatively, of the reduction in volume and in number of occurrences of SSOs and Unpermitted Discharges and discharges from the District's CSO Outfalls;
- (c) The anticipated projects and activities that will be performed in the successive quarter to comply with the requirements of this Consent Decree, in Gantt chart or similar format; and
- (d) Any additional information necessary to demonstrate that the District is adequately implementing its Initial Watershed Program Projects and Submittals as set forth in Section IV.C above and its Watershed Plans as set forth in Section IV.D above.

43. **Annual Reports.** The District shall submit to the Cabinet/EPA an annual report for the previous fiscal year, with the first report due December 31, 2006, and each year thereafter by December 31, with a summary of the CMOM Program's implementation pursuant to this Consent Decree, including a comparison of actual performance with any performance measures that have been established.

VI. REVIEW OF SUBMITTALS

44. The Cabinet/EPA agree to expeditiously review and comment on submittals that the District is required to submit to the Cabinet/EPA for approval pursuant to the terms and provisions of this Consent Decree. If the Cabinet/EPA cannot complete its review of a submittal within ninety days of receipt of the submittal, the Cabinet/EPA shall so notify the District before the expiration of the ninety-day review period. If the Cabinet/EPA fail to approve, provide comments or otherwise act on a submittal within ninety days of receipt of the submittal, any subsequent milestone date set forth in the submittal that is dependent upon such action by the Cabinet/EPA shall be extended by the number of days beyond the ninety-day review period that is used by the Cabinet/EPA for review and approval of the submittal.

45. Upon review of submittals that the District is required to submit to the Cabinet/EPA for approval pursuant to the terms and provisions of this Consent Decree, the Cabinet/EPA may jointly: (1) approve the submittal in writing, in whole or in part, or (2) in the event the submittal is not approved in whole, provide written comments to the District identifying any deficiencies. Upon receipt of any Cabinet/EPA comments identifying deficiencies, the District shall have sixty days to revise and resubmit the submittal to the Cabinet/EPA for review and approval, subject to the District's rights

under the dispute resolution provisions of this Consent Decree. Upon resubmission, the Cabinet/EPA shall jointly approve or disapprove the revised submittal. If the resubmission is disapproved, the Cabinet/EPA may require further revisions to the submittal by the District, subject to the District's rights under the dispute resolution provisions of this Consent Decree, or may deem the District to be out of compliance with this Consent Decree for failure to timely submit the submittal in compliance with the requirements of this Consent Decree and may assess stipulated penalties pursuant to this Consent Decree, subject only to the District's rights under the dispute resolution provisions of this Consent Decree. Upon Cabinet/EPA approval of all or any part of a submittal set forth in Paragraphs 35, 36, 38 and 39(a) of this Consent Decree (NMC Compliance Demonstration, CMOM Programs Self-Assessment, Grease Control Program, Pump Station Operation Plan for Backup Power, SORP, Pump Station Plan, and Framework for Developing the Watershed Plans), any such submittal, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be incorporated into this Consent Decree and become an enforceable requirement of this Consent Decree. Upon Cabinet/EPA approval of all or any part of a Watershed Plan or an Updated Watershed Plan set forth in Paragraphs 39(b) and (c) of this Consent Decree, the Watershed Plan or Updated Watershed Plan, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), shall be incorporated into this Consent Decree by proposed material amendment under Paragraph 82 of this Consent Decree and, upon approval by the Court, shall become an enforceable requirement of this Consent Decree.

VII. CIVIL PENALTY

46. Within 60 sixty days of entry of this Consent Decree, the District shall pay a civil penalty in the amount of \$476,400 as follows: \$338,200 shall be paid to the Cabinet and \$138,200 shall be paid to the United States.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

47. In consideration of the settlement with Cabinet and EPA of the action resolved by this Consent Decree, the District shall timely perform the supplemental environmental project ("SEP") as set forth in Exhibit G. The total expenditure for the SEP shall not be less than \$311,000. If the District fails to perform the SEP by the dates specified in Exhibit G, the District shall pay the difference between its documented SEP expenditures and \$311,000 as a stipulated penalty. Fifty percent of such payment due shall be paid to the Cabinet and fifty percent shall be paid to the United States. Such payment shall be due and payable on the date for completion of the SEP identified in Exhibit G. Alternatively, the District may propose, and the Cabinet/EPA shall consider, additional SEPs for which the total expenditure shall not be less than the difference between its documented SEP expenditures and \$311,000.

48. The District shall submit to the Cabinet/EPA a SEP Completion Report for the SEP described in Exhibit G no later than sixty days from the date for completion of the SEP set forth in Exhibit G. The Report shall contain the following information for the SEP: i) a detailed description of the SEP as implemented; ii) a description of any operating problems encountered and the solutions thereto; iii) itemized costs; iv) certification that the SEP has been fully implemented pursuant to Exhibit G and the

provisions of this Consent Decree; and v) a description of the environmental and public health benefits resulting from implementation of the SEP.

IX. STATE ENVIRONMENTAL PROJECTS

49. In further consideration of the settlement with the Cabinet of the action resolved by this Consent Decree, the District shall timely perform state environmental projects ("State Environmental Projects") as set forth in Exhibit H. The total expenditure for the State Environmental Projects shall not be less than \$325,000. If the District fails to perform these State Environmental Projects by the dates specified in Exhibit H, the District shall pay to the Cabinet the difference between its documented State Environmental Project expenditures and \$325,000 as a stipulated penalty. Such payment shall be due and payable on the latest date for completion of the State Environmental Projects identified in Exhibit H. Alternatively, the District may propose, and the Cabinet shall consider, additional State Environmental Projects for which the total expenditure shall not be less than the difference between its documented State Environmental Project expenditures and \$325,000.

50. The District shall submit to the Cabinet a State Environmental Project Completion Report for each State Environmental Project described in Exhibit H no later than sixty days from the date for completion of the State Environmental Projects set forth in Exhibit H. The Report shall contain the following information for each State Environmental Project: i) a detailed description of the State Environmental Project as implemented; ii) a description of any operating problems encountered and the solutions thereto; iii) itemized costs; iv) certification that the State Environmental Project has been fully implemented pursuant to Exhibit H and the provisions of this Consent Decree; and

v) a description of the environmental and public health benefits resulting from implementation of the State Environmental Project.

X. STIPULATED PENALTIES

51. For failure to timely submit any of the submittals prescribed in Paragraphs 35, 36, 38 and 39 of this Consent Decree (NMC Compliance Demonstration, CMOM Programs Self-Assessment, Grease Control Program, Pump Station Operation Plan for Backup Power, SORP, Pump Station Plan, Framework for Developing the Watershed Plans, Watershed Plans, and Updated Watershed Plans), the Cabinet/EPA may jointly assess against the District a stipulated penalty in the amount of three thousand dollars (\$3,000). For each day the District remains out of compliance for failure to timely submit any of the above submittals, the Cabinet/EPA may jointly assess against the District a stipulated penalty of an additional one hundred dollars (\$100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

52. For each day the District fails to timely complete projects in accordance with the schedule set forth in an approved NMC Compliance Demonstration, CMOM Programs Self-Assessment, Pump Station Operation Plan for Backup Power, Pump Station Plan, Watershed Plan, or Updated Watershed Plan, the Cabinet/EPA may jointly assess against the District stipulated penalties for each such project as follows:

Period Beyond Completion Date	Penalty Per Violation Per Day
1 - 30 days	\$1,000
31 - 60 days	\$2,000
61 - 120 days	\$3,000
more than 120 days	\$5,000

This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

53. For failure to timely submit a Quarterly Report or an Annual Report, the Cabinet/EPA may jointly assess against the District a stipulated penalty in the amount of one thousand dollars (\$1,000). This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

54. For the circumstances described below, the Cabinet/EPA may jointly assess against the District stipulated penalties as follows:

(a) For dry weather CSOs occurring after twenty four months from date of entry of this Consent Decree, two thousand dollars (\$2,000) per discharge (provided, however, that the Cabinet/EPA shall not assess stipulated penalties for those discharges resulting from the District's compliance with the requirements of the United States Army Corps of Engineers' Ohio River Flood Protection System Pumping Operations Manual, dated 1954 and revised 1988, which shall be addressed under the LTCP components of the Watershed Plans).

(b) For SSOs at a pump station identified on Exhibit E, five thousand dollars (\$5,000) per SSO occurring after the date for completion of construction of remedial measures for such pump station as identified on Exhibit E.

These penalties are in addition to, and not in lieu of, any other penalty that could be assessed.

55. If the Cabinet/EPA determine to assess and demand a stipulated penalty, the Cabinet/EPA shall jointly send the District written notice, including the amount of the stipulated penalty due. The District shall pay the stipulated penalty within thirty days of receipt of the notice. Fifty percent of each payment due shall be paid to the Cabinet and fifty percent shall be paid to the United States.

56. If the District believes the request for payment of a stipulated penalty is erroneous or contrary to law, it may invoke the dispute resolution provisions of this Consent Decree. Invoking the dispute resolution provisions does not automatically excuse timely payment of the penalty or the continuing accrual of stipulated penalties, unless agreed to by the Cabinet and EPA or stayed by the Court. If the District invokes the dispute resolution provisions of this Consent Decree under these circumstances, the District shall deposit the amount of the stipulated penalty into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank. Upon final resolution of the dispute by the Cabinet and EPA, or the Court, the District shall, within five (5) days thereof, serve written instructions directing that the escrow agent, within fifteen days thereof, cause the monies in the escrow account to be paid to Cabinet and the United States in accordance with the procedures set forth in Paragraph 57 below, or returned to the District, depending on the outcome of the dispute resolution process. The District's failure to make timely payment of stipulated penalties, either to the Cabinet, the United States or to an escrow account pursuant to this Paragraph, shall constitute an additional violation of this Consent Decree.

XI. PAYMENT OF PENALTIES AND STIPULATED PENALTIES

57. Payment of all sums due to the Cabinet shall be by cashier's check, certified check, or money order, made payable to "Kentucky State Treasurer", and sent to:

Kentucky Department for Environmental Protection
Division of Enforcement
14 Reilly Road
Frankfort, KY 40601
Attention: Director

Payment of all sums due to United States shall be made by electronic funds transfer, in accordance with written instructions to be provided by the United States after entry of this Consent Decree. The costs of such electronic funds transfer shall be the responsibility of the District. The District shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the Parties as specified in Paragraph 75 below. The transmittal letter shall reference the case name and DOJ Case No. 90-5-1-1-08591.

XII. DISPUTE RESOLUTION

58. Any dispute that arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The District shall invoke the informal dispute resolution procedures by notifying the Cabinet and EPA in writing of the matters(s) in dispute and of the District's intention to resolve the dispute under these Paragraphs 58 and 59. The notice shall: (1) outline the nature and basis of the dispute; (2) include the District's proposed resolution; (3) include all information or data relating to the dispute and the proposed resolution; and (4) request negotiations pursuant to this Paragraph to informally resolve the dispute. The Parties shall then attempt to resolve the dispute informally for a period of thirty days from the date of the notice with the goal of resolving the dispute in good faith, without further proceedings. The period for informal negotiations shall not exceed thirty days from the date of the original notice of this dispute, unless the Parties otherwise agree in writing to extend that period.

59. If informal negotiations are unsuccessful, the position of the Cabinet and EPA shall control unless, within thirty days after the conclusion of the informal negotiation period, the District seeks judicial review of the dispute by filing with the Court and serving on the Cabinet and EPA a motion requesting judicial resolution of the dispute. The motion shall contain a written statement of the District's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. The Cabinet and EPA shall respond to the District's motion within thirty days. Either Party may request an evidentiary hearing for good cause. The burden of proof is on the District to demonstrate that its position on the matter in dispute meets the objectives of the Consent Decree, any amendment to this Consent Decree, the CWA and KRS Chapter 224. If the dispute is not resolved within the schedule identified for orderly implementation of the Consent Decree in the District's motion, the District may request additional time beyond compliance schedules or deadlines in this Consent Decree that are dependent upon the duration and/or resolution of the dispute.

XIII. FORCE MAJEURE

60. The District shall perform the requirements of this Consent Decree within the time limits set forth in this Consent Decree unless the performance is prevented or delayed solely by events which constitute a force majeure.

61. A force majeure event is defined as any event arising from causes not reasonably foreseeable and beyond the control of the District or its consultants, engineers, or contractors which could not be overcome by due diligence and which delays or prevents performance as required by this Consent Decree.

62. Force majeure events do not include unanticipated or increased costs of performance, changed economic or financial conditions, or failure of a contractor to perform or failure of a supplier to deliver unless such failure is, itself, the result of force majeure.

63. The District shall notify the Cabinet's Director of the Division of Enforcement and EPA's Chief of the Water Programs Enforcement Branch by telephone within ten (10) business days and in writing within fifteen business days after it becomes aware of events which it knows or should reasonably know may constitute a force majeure. The District's notice shall provide an estimate of the anticipated length of delay, including any necessary period of time for demobilization and remobilization of contractors or equipment; a description of the cause of delay; a description of measures taken or to be taken by the District to minimize delay, including a timetable for implementing these measures.

64. Failure to comply with the notice provision shall be grounds for the Cabinet and EPA to deny granting an extension of time to the District. If any event is anticipated to occur which may cause a delay in complying with the terms of this Consent Decree, the District shall promptly notify the Cabinet's Director of the Division of Enforcement and EPA's Chief of the Water Programs Enforcement Branch in writing within ten (10) business days of learning of the possibility of a force majeure event, if the event has not already occurred. The Cabinet/EPA will jointly respond in writing to any written notice received.

65. If the District reasonably demonstrates to the Cabinet and EPA that the delay has been or will be caused by a force majeure event, the Cabinet and EPA will

extend the time for performance for that element of the Consent Decree for a period not to exceed the delay resulting from such circumstances. Stipulated penalties shall not accrue for any such period of delay resulting from a force majeure event.

66. If a dispute arises over the occurrence or impact of a force majeure event and cannot be resolved, the Cabinet/EPA reserves the right to seek enforcement of this Consent Decree and the District reserves the right to invoke the dispute resolution provisions of this Consent Decree. In any such dispute, the District shall have the burden of proof that a violation of this Consent Decree was caused by a force majeure event.

XIV. COST OF SUIT

67. The Parties shall bear their own costs and attorneys' fees with respect to matters related to this Consent Decree.

XV. CERTIFICATION OF SUBMISSIONS

68. In all notices, documents or reports submitted pursuant to this Consent Decree, the District shall, by a responsible party of the District, as defined by 40 C.F.R. § 122.22, sign and certify each such notice, document and report as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XVI. RIGHT OF ENTRY

69. The Cabinet and EPA and their authorized representatives and contractors shall have authority at all times, upon the presentation of proper credentials, to enter the

premises of the District to:

- (a) Monitor the work required by this Consent Decree;
- (b) Verify any data or information submitted to the Cabinet or EPA;
- (c) Obtain samples from any portion of the SSS, CSS or WWTPs;
- (d) Inspect and evaluate any portions of the SSS, CSS or WWTPs;
- (e) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree or any KPDES permit, the CWA and KRS Chapter 224; and
- (f) Otherwise assess the District's compliance with state and federal environmental laws and this Consent Decree.

The rights created by this Paragraph are in addition to, and in no way limit or otherwise affect, the authority of the Cabinet or EPA to conduct inspections, to require monitoring and to obtain information from the District as authorized by law.

XVII. RECORD RETENTION

70. The District shall retain all data, documents, plans, records and reports that relate to the District's performance under this Consent Decree which are in the possession, custody, or control of the District or its consultants or contractors. The District shall retain all such materials for five (5) years from the date of origination. Drafts of final documents, plans, records, or reports do not need to be retained. This Paragraph does not limit or affect any duty or obligation of the District to maintain records or information required by any KPDES permit. At the conclusion of this retention period, the District shall notify the Cabinet and EPA at least one-hundred and twenty days prior to the destruction of any such materials, and upon request by any of

these Parties, the District shall deliver any such materials to that Party.

XVIII. PUBLIC COMMENTS

71. The Parties agree and acknowledge that final approval of this Consent Decree by the Cabinet and EPA, and entry of this Consent Decree by the Court, are subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The District hereby agrees not to withdraw from, oppose entry of, or challenge any provision of this Consent Decree, unless the Cabinet or EPA has notified the District in writing that it no longer supports entry of the Consent Decree.

XIX. CONTINUING JURISDICTION

72. The Court shall retain jurisdiction to effectuate and enforce the terms and conditions and achieve the objectives of this Consent Decree, and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification, implementation, or execution of this Consent Decree.

XX. SIGNATORIES

73. The signatories for the Parties certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Parties to this document.

74. The District's agent identified on the attached signature page is authorized to accept service of process by mail on the District's behalf with respect to all matters arising under or related to this Consent Decree. The District agrees to accept service of process in that manner and to waive the formal service and notice requirements set forth in Section 505 of the CWA, 33 U.S.C. § 1365, and Rule 4 of the Federal Rules of Civil

Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

XXI. MISCELLANEOUS PROVISIONS

75. Unless otherwise specified, or as may be changed from time to time, all reports, notices, or any other written communications required to be submitted under this Consent Decree by the District to the Cabinet and EPA shall be sent to following addresses:

As to Cabinet:

Director of the Division of Enforcement
Department for Environmental Protection
14 Reilly Road, Frankfort, Kentucky 40601

For verbal notifications: Susan Green, Division of Enforcement, (502) 564-2150.

As to EPA:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference DOJ Case No. 90-5-1-1-08591

Chief, Water Programs Enforcement Branch
Water Management Division
U.S. Environmental Protection Agency,
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

For verbal notifications: Doug Mundrick, Chief, Water Programs Enforcement Branch, (404) 562-9328

76. All notices to the District required by this Consent Decree shall be sent to General Manager, Sanitation District No. 1, 1045 Eaton Drive, Fort Wright, KY 41017-9681, unless otherwise designated in writing by the District.

77. Notifications to, or communications with, the Parties shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested, or deposited with an overnight mail/delivery service.

78. This Consent Decree is entered in full and final settlement of the civil claims for violations of KRS Chapter 224 and the CWA as alleged in the complaints filed by the Cabinet and EPA up through the date of entry of this Consent Decree, but shall not affect rights or obligations not specifically addressed herein, as to which the Parties specifically reserve their rights. The Cabinet and EPA enter into this Consent Decree, in part, based upon information supplied by the District. Nothing contained herein shall be construed to waive or limit any remedy or cause of action by the Cabinet or EPA based on statutes or regulations under its jurisdiction, and the District reserves its defenses thereto, except that the District shall not use this Consent Decree as a defense. The Cabinet and EPA reserve their rights at any time to issue administrative orders or to take any other action it deems necessary, including the right to order all necessary remedial measures, assess penalties for violations or recover any response costs that may be incurred, and the District reserves its defenses thereto, except that the District shall not use this Consent Decree as a defense.

79. This Consent Decree shall not prevent the Cabinet or EPA from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to the District, including any necessary modifications to the District's KPDES

permits for WWTPs to maintain consistency with the CSO Control Policy. The District shall not use this Consent Decree as a defense to those permit actions.

80. The District waives its rights to any hearing on the matters addressed herein. Failure by the District to comply strictly with the terms of this Consent Decree shall be grounds for the Cabinet and EPA to seek enforcement of this Consent Decree in this Court and to pursue any other appropriate administrative or judicial action under the CWA or KRS Chapter 224, and the regulations promulgated pursuant thereto.

81. Each separate provision, condition or duty contained in this Consent Decree may be the basis for an enforcement action for a separate violation and penalty pursuant to the CWA and KRS Chapter 224, upon the failure to comply with the terms of this Consent Decree.

82. The terms and conditions stated herein are intended to be implemented as a whole and may not be challenged independently. Except as set forth below, this Consent Decree may not be materially amended or modified except by written agreement of the Parties, and approval of this Court. Any material modification of this Consent Decree shall be effective upon approval of the Court. Non-material modifications of the obligations of the Parties which do not significantly alter the terms of this Consent Decree, such as changes to schedules or interim deadlines for any project to be implemented pursuant to a submittal required by this Consent Decree, may be made in writing by the Parties. If the District is involuntarily divested of its existing authority or ability to comply with this Consent Decree due to a final court order or an act of the Kentucky General Assembly, the District may seek to amend this Consent Decree consistent with this Paragraph.

83. The Cabinet/EPA do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the District's complete compliance with this Consent Decree will result in compliance with the provisions of the CWA or KRS Chapter 224 and the regulations promulgated pursuant thereto, nor with any permit. Notwithstanding the Cabinet's and EPA's review and approval of any plans formulated pursuant to this Consent Decree, the District shall remain solely responsible for compliance with the CWA, the terms of KRS Chapter 224 and the regulations promulgated pursuant thereto, this Consent Decree and any permit requirements. This Consent Decree is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, nor shall it in any way relieve the District of its obligations to obtain permits for its WWTPs and related operations or facilities and to comply with the requirements of any KPDES permit or with any other applicable state or federal law or regulation. Any new permit, or modification of existing permits, shall be complied with in accordance with applicable state or federal laws and regulations.

84. The provisions of this Consent Decree shall apply to and be binding upon the District. The acts or omissions of the District's officers, directors, agents, servants and employees shall not excuse the District's performance of any provision of this Consent Decree. The Cabinet and EPA reserve their rights to seek enforcement of this Consent Decree against the District's successors and assigns and the District reserves its defenses thereto. The District shall give notice of this Consent Decree to any purchaser, lessee or successor-in-interest prior to the transfer of ownership and/or operation of all or any portion of the Sewer System or a WWTP occurring prior to termination of this

Consent Decree, shall notify the Cabinet and EPA that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, the District shall remain fully responsible for payment of all civil penalties, stipulated penalties, and for performance of all remedial measures identified in this Consent Decree; provided, however, that if the District is involuntarily divested of its ownership or control over all or any portion of the Sewer System or a WWTP due to a final court order or an act of the Kentucky General Assembly, the District may seek to amend this Consent Decree consistent with Paragraph 82.

85. By agreeing to the terms and conditions of this Consent Decree, the District is not waiving any rights, claims or causes of action against third parties that it may have that arise from, or relate to the matters addressed in this Consent Decree.

86. The Parties acknowledge and agree that the terms and conditions of this Consent Decree are facility-specific and are designed specifically for the unique characteristics of the District's wastewater conveyance system and the factual circumstances of this case. The language of this Consent Decree is specifically tailored for the District's system.

87. The Consent Decree is subject to termination on the date that the District certifies that it has met all requirement of this Consent Decree, including, without limitation, (a) completion of all SEPs, (b) payment of all penalties and stipulated penalties due, (c) submission and approval of the NMC Compliance Demonstration, CMOM Programs Self-Assessment, Grease Control Program, Pump Station Operation Plan for Backup Power, SORP, Pump Station Plan, Framework for Developing the Watershed Plans, Watershed Plans, and Updated Watershed Plans, and (d) completion of

all work and implemented all the requirements in the NMC Compliance Demonstration, CMOM Programs Self-Assessment, Grease Control Program, Pump Station Operation Plan for Backup Power, SORP, Initial Watershed Program Project List, Pump Station Plan, Framework for Developing the Watershed Plans, Watershed Plans, and Updated Watershed Plans, as required under this Consent Decree or any amendment to this Consent Decree. The Cabinet/EPA's determination that the Consent Decree should be terminated shall be based on a consideration of whether all of the requirements listed above have occurred.

88. The District may request that the Cabinet/EPA make a determination that this Consent Decree be terminated. Any such request shall be in writing and shall include a certification that the requirements listed in the above Paragraph have been met. The District shall serve a copy of any such request on the Cabinet through the office of its Secretary and EPA through the Director of the EPA Region 4 Water Division. If the Cabinet/EPA agree that the District has met all of the requirements listed above, the Cabinet/EPA and the District shall file a joint motion with the Court seeking an order terminating the Consent Decree. If the Cabinet/EPA determine not to seek termination of the Consent Decree because they determine that all of the requirements listed above were not met, they shall so notify the District in writing. The Cabinet/EPA's notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance. If the District disagrees with any such determination by the Cabinet/EPA, it shall invoke the dispute resolution procedures of this Consent Decree before filing any motion with the Court regarding the disagreement.

So ORDERED, this _____ day of _____, 2005.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. § 50.7, and submits it to the Court for entry.

FOR THE COMMONWEALTH OF KENTUCKY,
ENVIRONMENTAL & PUBLIC PROTECTION
CABINET:

JOHN W. CLAY, Deputy Secretary

(

BRENDA LOWE
SHARON VRIESENKA
Office of Legal Services
5TH Floor, Capital Plaza Tower
Frankfort, KY 40601
Telephone: (502) 564-5376
Facsimile: (502) 564-6131

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. § 50.7, and submits it to the Court for entry.

FOR SANITATION DISTRICT NO. 1 OF
NORTHERN KENTUCKY.

DAVID NORAN
PRESIDENT OF THE BOARD

JEFFERY A. BENDER
GENERAL MANAGER

JOHN C. BENDER
Counsel for Sanitation District No.1
Greenebaum Doll & McDonald PLLC
300 W. Vine Street, Suite 1100
Lexington, KY 40507-1665
Telephone: (859)231-8500
Fascimile: (859) 255-2741

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. § 50.7, and submits it to the Court for entry.

FOR THE UNITED STATES OF AMERICA:

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

STEVEN KELLER
Trial Attorney
Environment and Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Washington, D.C. 20044
Telephone: (202) 514-5465
Fascimile: (202) 514-2583

GREGORY F. VAN TATENHOVE
United States Attorney

ANDREW SPARKS
Assistant United States Attorney
Eastern District of Kentucky
110 West Vine Street
Lexington, Kentucky 40507
Telephone: (859) 233-2661, ext 148
Fascimile: (859) 233-2533

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. § 50.7, and submits it to the Court for entry.

FOR THE UNITED STATES OF AMERICA:

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

THE UNDERSIGNED Party enters into this Consent Decree, subject to the public notice requirements of 28 C.F.R. §50.7, and submits it to the Court for entry.

FOR THE UNITED STATES OF AMERICA:

MARY KAY LYNCH
Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, Georgia 30303
Telephone: (404) 562-9556
Fascimile: (404) 562-9663

WILLIAM B. BUSH, JR.
Assistant Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, Georgia 30303
Telephone: (404) 562-9538
Fascimile: (404) 562-9487

COPIES TO:

John C. Bender
Greenebaum Doll & McDonald PLLC
300 West Vine Street, Suite 1100
Lexington, KY 40507-1655

Brenda Lowe
Office of Legal Services
5TH Floor, Capital Plaza Tower
Frankfort, KY 40601